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No. 90-622

Supreme Court, U.S.
FILED
JAN 17 1991
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1990

STATE OF FLORIDA, PETITIONER

v.

LUZ PIEDAD JIMENO and ENIO JIMENO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the police violated the Fourth Amendment when, after obtaining consent to search respondents' automobile for drugs, they opened a paper bag that they found lying on the floor in the passenger compartment of the car.

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INTEREST OF THE UNITED STATES

This case involves the scope of a general consent to search an automobile when the consenting party puts no special limitations on his consent. This issue has arisen, and can be expected repeatedly to arise, in prosecutions under a number of federal statutes, including those involving drug and firearms offenses. See, *e.g.*, *United States* v. *Anderson*, 859 F.2d 1171 (3d Cir. 1988); *United States* v. *Kapperman*, 764 F.2d 786, 794 (11th Cir. 1985); *United States* v. *Covello*, 657 F.2d 151, 155 (7th Cir. 1981). The United States therefore has a direct and substantial law enforcement interest in the disposition of this case.

STATEMENT

1. On the afternoon of July 20, 1988, Miami police officer Frank Trujillo saw respondent Enio Jimeno and his wife, respondent Luz Jimeno, drive into a parking lot and get out of their car. Co-defendant Cesar Tabares, who was sitting in the back seat, also got out of the car at that time. Enio Jimeno made several telephone calls from a pay telephone; Officer Trujillo overheard part of one of the conversations, which made him suspect that the Jimenos were engaged in drug trafficking. Pet. App. A5-A6; Suppression Hearing Tr. 15-19.

The Jimenos and Tabares returned to the car and drove to a nearby apartment complex. After the Jimenos and Tabares had been inside the apartment building for a few minutes, Tabares returned to the car, picked up a brown paper bag with a colored fabric around it, and went back into the building. After about 15 to 20 minutes, the two Jimenos and Tabares returned to the car. Enio Jimeno was carrying a briefcase and the brown paper bag that Tabares had taken into the apartment. As they got into the car, Enio Jimeno gave Tabares the paper bag. Tabares took the fabric off the bag and handed it back to Luz Jimeno, who was sitting in the front passenger seat. She put the bag on the floorboard of the car at her feet. Pet. App. A6; Suppression Hearing Tr. 20-21.

Officer Trujillo followed the car as it left the apartment complex. He pulled the car over after he saw it make a right turn at a red light without stopping. Pet. App. A6; Suppression Hearing Tr. 21-22.[1] Enio

[1] Following a suppression hearing at which Officer Trujillo was the only witness, the trial court made findings of fact, Pet. App. A5-A6, including that the traffic stop was valid and could have been made even apart from the suspected drug trafficking, Pet. App. A6.

Jimeno got out of the car and walked toward Officer Trujillo. Officer Trujillo identified himself as a police officer, told Jimeno he had run a red light, and asked to see Jimeno's driver's license. Suppression Hearing Tr. 22. After examining the license, Officer Trujillo said (*id.* at 23):

> Sir, Mr. Jimeno, the reason I'm stopping you—in addition to the traffic infraction, I am conducting a narcotics investigation where I have suspicion to believe you are carrying narcotics in your car.

Officer Trujillo then asked Jimeno for permission to search the car. He explained that Jimeno did not have to consent to a search of the car, that Jimeno did not have to speak with him, and that Jimeno was free to leave at any time. Officer Trujillo added that if Jimeno did consent to a search of the vehicle, he could tell the officers to stop at any point during the search.[2] Jimeno then gave his consent to a search of the automobile. According to Officer Trujillo, Jimeno "said he had nothing to hide, we could go ahead and search the vehicle." Pet. App. A6; Suppression Hearing Tr. 23-24.[3]

[2] Officer Trujillo said that if Jimeno did not consent to a search, the officers would seek a search warrant, but he added that a warrant would not necessarily be issued, because the judge presented with a request for a warrant could refuse to issue one. Suppression Hearing Tr. 23.

[3] Before requesting Jimeno's consent to search the car, Officer Trujillo determined that Jimeno and his wife owned the car. Suppression Hearing Tr. 24. It is undisputed that Jimeno had the authority to consent to a search of the car and that it was therefore unnecessary for Officer Trujillo to

After the other two passengers got out of the car, Officer Trujillo went to the passenger side, opened the door, and saw the brown paper bag on the floorboard. The bag was rolled up, so that its contents could not be seen without unfolding and opening it. Pet. App. A6; Suppression Hearing Tr. 24, 37, 48, 49. Officer Trujillo picked up the bag, opened it, and found a kilogram of cocaine inside. Suppression Hearing Tr. 26-28.

2. Following an evidentiary hearing on respondents' motion to suppress the cocaine, the trial court found that Jimeno had freely consented to the search of the car. In addition, the court found that Officer Trujillo had advised Jimeno that he wanted to search the vehicle because he was looking for illegal drugs, and the court acknowledged that respondent "could have assumed that the officer would have searched the bag." Pet. App. A6. Nonetheless, the court suppressed the cocaine. The court found that Officer Trujillo never specifically requested permission "to open the bag and examine the contents," and that respondent "did not specifically consent to the search of the bag." Citing the Florida Supreme Court's decision in *State* v. *Wells*, 539 So. 2d 464 (1989), aff'd on other grounds, 110 S. Ct. 1632 (1990), the trial court concluded that, absent a specific consent to search the bag, "the scope of the consent given did not extend to the search and seizure of the bag," Pet. App. A6, and that the search of the bag was therefore unlawful.[4]

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obtain consent for the search from respondent Luz Jimeno as well. See *United States* v. *Matlock*, 415 U.S. 164, 169-172 (1974).

[4] The court denied the motion to suppress as to Tabares on the ground that he lacked standing to object to the search. Pet. App. A7.

3. On the State's appeal, the district court of appeal affirmed the grant of the suppression motion. Pet. App. A3-A4. The court held that "a concededly valid consent to search a motor vehicle for narcotics" does not permit "a search of a closed paper bag found on the front floor of the passenger side of that car," *id.* at A3, because "consent to a general search for narcotics does not extend to sealed containers within the general area agreed to by the defendant." *Id.* at A4 (internal quotation marks omitted). The court then certified the question to the Florida Supreme Court for review. *Ibid.*

4. The Florida Supreme Court affirmed in a brief opinion, with one justice dissenting. Pet. App. A1-A2. The court stated that the case was controlled by its previous decision in *State* v. *Wells*, *supra*, and agreed that "consent to search a vehicle does not extend to a closed container found inside the vehicle." Pet. App. A1.

In the *Wells* case, on which the Florida Supreme Court based its ruling in this case, the defendant had consented to a search of the trunk of his car. Upon obtaining access to the trunk with the defendant's permission, the police discovered a locked suitcase. Without seeking the defendant's permission to enter the suitcase, the police forced the lock and opened it, finding marijuana inside. The Florida Supreme Court ordered the marijuana to be suppressed. It held that if the terms of the consent to search a vehicle do not "convey permission to break open a locked or sealed container, it is unreasonable for the police to do so unless the search can be justified on some other basis." Pet. App. A13. The *Wells* court concluded that "the general consent to look in an automobile trunk * * * did not constitute permission to pry open a locked piece of luggage found inside." Pet. App. A14.

SUMMARY OF ARGUMENT

Respondent Enio Jimeno consented, voluntarily and without restriction, to having a police officer search his car for drugs. If a magistrate had issued a warrant to search the car for narcotics, or if the officer had searched the car on probable cause under the "automobile exception" to the warrant requirement, the officer undoubtedly could have opened the paper bag he found inside the car during the search. The paper bag would be within the scope of the authority to search because, absent some express or implied limitation, the search of a car is reasonably understood to contemplate not only an examination of the interior features of the car itself, but also an examination of any containers found inside the car that might contain the objects for which the search was authorized.

The same principle should govern the scope of a consent search. Because the search of a car is ordinarily understood to contemplate the search of containers found within it, the search of closed but unsealed containers should be regarded as within the scope of a general consent to search a car, as long as the consent is not limited, expressly or by implication, to exclude such containers. That principle applies with special force in a case such as this one, where the police have told the consenting person what they are looking for before they obtain consent to search, and where the container in question could reasonably be expected to contain the object of the search.

The Florida Supreme Court committed error when it adopted a per se rule that "the consent to search a vehicle does not extend to a closed container found inside the vehicle." Pet. App. A1. It is reasonable to conclude that a general consent to search a car

ordinarily does not authorize police to break open a locked container or take other steps that result in significant property damage. That is because a person consenting to a search would not ordinarily be understood to consent to the destruction of a suitcase or other locked container without explicitly permitting such measures. But when a person consents to the search of an automobile, especially a search for items such as drugs that are usually kept in containers, the authorization to search would ordinarily be understood to embrace the right to look into closed containers found within the automobile, if opening those containers involved no significant damage to property. In light of that understanding, and in the absence of some express or implied restriction on the scope of the consent granted in a particular case, closed but unsealed containers found in an automobile may lawfully be opened as part of a consent search of the car.

ARGUMENT

A GENERAL AND UNRESTRICTED CONSENT TO SEARCH A CAR AUTHORIZES THE OPENING OF CLOSED CONTAINERS FOUND DURING THE SEACH

The issue in this case is how broadly to construe a general consent to search a car, where there is no express or implied limitation on the scope of the search. In particular, the case presents the question whether police who obtain a general consent to search an automobile for narcotics may open a closed but unsealed container that they find in the passenger compartment. In our view, the principles underlying the law of consent searches compel an affirmative answer.

A. The Scope Of A Consent Search Depends On The Terms Of The Authorization, Objectively Viewed

The Fourth Amendment forbids the police from conducting "unreasonable" searches or seizures. A search that is conducted pursuant to consent is considered "reasonable" even if it is conducted without either a warrant or probable cause. *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 219 (1973). As this Court stated in *Schneckloth*, 412 U.S. at 242-243, "[w]hile the Fourth and Fourteenth Amendments limit the circumstances under which the police can conduct a search, there is nothing constitutionally suspect in a person's voluntarily allowing a search." Indeed, because "the community has a real interest in encouraging consent," *id.* at 243, this Court has consistently regarded a "properly conducted" consent search as a "constitutionally permissible and wholly legitimate aspect of effective police activity."

As the Court has explained, consent searches play a unique and valuable role in law enforcement. "In situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence." *Schneckloth*, 412 U.S. at 227. In part for that reason, the Court has rejected the argument that "every reasonable presumption ought to be indulged against" a finding of consent, *id.* at 243, and it has held that while the government bears the burden of proving a valid consent, it need only satisfy a preponderance of the evidence test rather than some higher standard, *United States* v. *Matlock*, 415 U.S. 164, 177-178 n.14 (1974).

Although consent cases often turn on whether the consent was validly obtained, an issue sometimes

arises as to the scope of the consent that was given. In *Walter* v. *United States*, 447 U.S. 649, 656 (1980) (plurality opinion), Justice Stevens set forth the principle that controls such cases: "When an official search is properly authorized—whether by consent or by the issuance of a valid warrant—the scope of the search is limited by the terms of its authorization." A consent to search renders police action reasonable, and thus not in violation of the Fourth Amendment, as long as the police respect the terms of the consent. If the consenting individual limits his consent—whether by withdrawing it, by restricting the area of the search, or by limiting the duration or the intensity of the search—the police must respect the limitations imposed. That is because a consent search that exceeds the apparent scope of the consenting party's authorization becomes a warrantless invasion of privacy without probable cause and is thus unlawful unless there is some other justification for the search. See *United States* v. *Milian-Rodriguez*, 759 F.2d 1558, 1563 (11th Cir. 1985); *Mason* v. *Pulliam*, 557 F.2d 426, 429 (5th Cir. 1977).

In some cases, the limitations on the scope of the consent are implied rather than express, but the limitations must still be respected. See, *e.g.*, *United States* v. *Dichiarinte*, 445 F.2d 126 (7th Cir. 1971) (consent to search home for narcotics held not to authorize police to open and read documents found in the course of the search). The task of the courts in such cases is to determine the scope of the consent in light of the terms and context in which the consent was requested and given.

Sometimes the terms and context of the consent are not particularly enlightening. The police may

simply request consent to search a particular area, and the individual may grant the consent without suggesting any particular limitation on the conduct of the search. In those cases, the court must determine what a reasonable officer would understand to be the scope of the consent. The test is an objective one. Even if an individual subjectively intends to consent to only a limited search, the police do not violate the reasonableness requirement of the Fourth Amendment if they act in accordance with what an objective viewer, knowing all the facts, would understand to be the scope of the consent granted. See *Illinois* v. *Rodriguez*, 110 S. Ct. 2793, 2799-2801 (1990) (police do not violate the Fourth Amendment if they reasonably believe a person has authority to consent to a search of a particular place, even if that belief turns out to be wrong).

B. A General Consent To Search A Car For Narcotics Authorizes The Search Of All Containers Inside The Car That Might Contain Narcotics And Can Be Opened Without Causing Property Damage

Where, as in this case, there is nothing to indicate that the consenting individual wished to restrict the scope of the search, the limits on the police officers' conduct must be defined by reference to generally shared expectations about what a consenting party authorizes the police to do when he consents to a search. While that question may be difficult to answer in the abstract, we believe that it can be answered with some specificity in certain commonly arising cases, such as a consent search of a car for drugs. In that setting, an unqualified consent to search the car should ordinarily be construed to permit the police to examine any closed containers within the car that could be used as receptacles for drugs and can be opened without causing significant property damage. That conclusion flows from this Court's analysis in closely related contexts as well as from principles applicable to the execution of searches generally.

1. In *United States* v. *Ross*, 456 U.S. 798, 820-821 (1982), this Court addressed the scope of authority to conduct a search of a vehicle under the "automobile exception" to the Fourth Amendment's warrant requirement. *Ross* established the principle that a warrantless search of an automobile based on probable cause extends to closed containers "that may conceal the object of the search." *Ross*, 456 U.S. at 825.

The police in *Ross* stopped a car after being told by an informant that it contained narcotics. In the trunk, the officers found a closed paper bag. Inside the bag were glassine bags filled with heroin. After finding that the search was supported by probable cause that would justify the issuance of a warrant, the Court upheld the lawfulness of the search —including the opening of the paper bag discovered in the trunk.

The Court explained that "[a] lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search." 456 U.S. at 820-821. The Court supported its holding by noting, *id.* at 820 n.26, that "[d]uring virtually the entire history of our country—whether contraband was transported in a horse-drawn car-

riage, a 1921 roadster, or a modern automobile—it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search." For example, the Court explained,

> a warrant that authorizes an officer to search a home for illegal weapons * * * provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between * * * glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

456 U.S. at 821. See also *Horton* v. *California*, 110 S. Ct. 2301, 2309-2310 & n.10 (1990); 2 W. LaFave, *Search and Seizure* § 4.10(b), at 317 (1987) ("It is not necessary, in order to comply with the Fourth Amendment requirement that the place to be searched be described with particularity, that the warrant also describe such receptacles" that might contain the objects of the search).[5]

[5] See also, *e.g.*, *United States* v. *Rutkowski*, 877 F.2d 139, 141 (1st Cir. 1989) (because the warrant authorized the officers to look for small items, jewelry, and coins, they were entitled to open a coffee can and some envelopes); *United States* v. *Martinez-Zayas*, 857 F.2d 122, 133 & n.7 (3d Cir. 1988) (warrant to search house for cocaine authorized search of purse inside house); *United States* v. *DeSimone*, 660 F.2d 532 (5th Cir. 1981) (warrant to search car for marijuana authorized search of suitcases discovered there), cert. denied, 455 U.S. 1027 (1982).

Although *Ross* involved a probable cause search, the Court's analysis is instructive with respect to consent searches as well. While consent in some instances can authorize a more extensive search than a warrant,[6] the scope of the officer's authority should not be restricted simply because the authorization for the search derives from the defendant's consent rather than from a magistrate's or a police officer's finding of probable cause. See *Schneckloth* v. *Bustamonte*, 412 U.S. at 243 ("The actual conduct of [a consent] search may be precisely the same as if the police had obtained a warrant."); *United States* v. *McBean*, 861 F.2d 1570, 1573 (11th Cir. 1988) ("The scope of a consent search is defined by the scope of actual consent in the same way that the scope of a search based upon a search warrant is defined by the warrant.").

The *Ross* Court found that where probable cause or a warrant authorizes the search of a car for drugs, the authorization to search containers found within the car is implicit in the authorization to search the car, even when the probable cause does not relate specifically to the containers, and even when the containers are not mentioned in the warrant. The rationale underlying that rule is that whatever is in the container is also in the car, so that the authority to search the container is implicit in the magistrate's authorization or the authorization provided by probable cause to search the car.

[6] For example, an individual's consent to a general exploratory search of his property would be valid, while a warrant must particularize the place to be searched and the things to be seized.

That rationale is equally applicable to a consent search, where the containers are so much a part of the car that the consenting party should naturally expect that they will be searched as part of the search of the car. Thus, when an individual gives the police general, unrestricted permission to search his car for drugs, he cannot reasonably claim to be surprised when the police look in any closed but unsealed containers they may find there. In light of that widely shared understanding, most courts have held that a general consent permits the opening of containers found in the place for which consent was given, particularly in the case of consent searches of cars.[7]

2. In addition to the considerations discussed above, there are other factors that weigh strongly in favor of permitting the search of a container based on a general consent to search a car for drugs. First, in a case such as this one, where the person giving consent is told in advance that the police are looking for drugs, it is entirely reasonable to con-

[7] See, *e.g.*, *United States* v. *Smith*, 901 F.2d 1116, 1118 (D.C. Cir.), cert. denied, 111 S. Ct. 172 (1990); *United States* v. *Battista*, 876 F.2d 201 (D.C. Cir. 1989); *United States* v. *Anderson*, 859 F.2d 1171 (3d Cir. 1988); *United States* v. *Sealey*, 830 F.2d 1028, 1032 (9th Cir. 1987); *United States* v. *Dyer*, 784 F.2d 812, 816 (7th Cir. 1986); *United States* v. *Kapperman*, 764 F.2d 786, 794 (11th Cir. 1985); *United States* v. *Covello*, 657 F.2d 151 (7th Cir. 1981); *Heald* v. *State*, 492 N.E.2d 671, 680 (Ind. 1986); *State* v. *Watson*, 416 So. 2d 919 (La. 1982); *Gamble* v. *State*, 318 Md. 120, 567 A.2d 95 (1989); *People* v. *Mirenda*, 57 N.Y.2d 261, 442 N.E.2d 49, 455 N.Y.S.2d 752 (1982); *State* v. *Prahin*, 235 Neb. 409, 455 N.W.2d 554 (1990); *State* v. *Morocco*, 99 N.C. App. 421, 393 S.E.2d 545 (1990); 3 W. LaFave, *Search and Seizure* § 8.1(c), at 161 (1987).

clude that the person's consent extends to containers in which drugs might be found. See *United States* v. *Kapperman*, 764 F.2d 786, 790, 794 (11th Cir. 1985) (after police explained that they were looking for drugs, consent to search vehicle permitted search of unlocked luggage inside "because the officers could reasonably assume that the narcotics would be found there"); see also *United States* v. *White*, 706 F.2d 806, 808 (7th Cir. 1983) (search of flight bag upheld even though defendant's consent to search apartment for drugs did not expressly authorize opening suitcases: "Since the officers could reasonably consider that heroin was in the flight bag, the search of the bag was within the scope of [the defendant's] consent."); *United States* v. *Battista*, 876 F.2d at 207-208 (consent to search for drugs justified a search of containers where contraband could be stored).

Because drugs are often carried in paper bags, a person giving a general consent to a car search for drugs should be deemed to consent to a search of any paper bags or other similar containers found inside the car. Like money or documents, drugs "rarely are strewn across the trunk or floor of a car; since by their very nature such goods must be withheld from public view, they rarely can be placed in an automobile unless they are enclosed within some form of container." *United States* v. *Ross*, 456 U.S. at 820. See also *United States* v. *Anderson*, 859 F.2d 1171, 1176 (3d Cir. 1988) (officer searching vehicle "for evidence that the drug laws had been violated could not expect the contraband to be lying in plain view"); *United States* v. *Kapperman*, 764 F.2d at 792 (consent to search car for "documents or items of property" is "consistent with permitting police to

search the unlocked suitcase, as documents or other items of property cannot necessarily be expected to be lying loose in an automobile"); *United States* v. *Covello*, 657 F.2d at 154 (letters and papers "would not be expected to be lying around loose. They would be contained in something"). As one court put it, "[p]ermission to search an automobile is hollow indeed if it does not include permission to search its contents and component parts." *United States* v. *Milhollan*, 599 F.2d 518, 527 (3d Cir.), cert. denied, 444 U.S. 909 (1979).

Second, if the person who consents to the car search is present during the search and does not raise any objection to the search of containers found in the car, the police can reasonably infer that the person's consent to the car search was not meant to exclude containers. See, *e.g.*, *United States* v. *Anderson*, 859 F.2d at 1177 (defendant "stood by and watched" police search bag found in trunk, which is behavior "completely inconsistent with the contention that [the defendant] retained an expectation of privacy" in the bag); *United States* v. *Espinosa*, 782 F.2d 888, 892 (10th Cir. 1986); *United States* v. *Sierra-Hernandez*, 581 F.2d 760, 764 (9th Cir. 1978). Because a person is ordinarily free to withdraw his consent to a search at any time, his failure to do so when the police begin examining containers in his presence is a strong indication that he regards the search of the containers as falling within the scope of his general consent to the search of the car.

Finally, the reasonableness of including container searches within the scope of a consent to search a particular place depends on what is required to gain access to the contents of the containers. If the containers can easily be opened, it is reasonable to treat

them as being within the scope of the consent. On the other hand, if the containers are locked or otherwise sealed in a manner that requires the police to do significant damage to the containers in order to open them, it is far less likely that the individual meant to authorize the police to open the containers. Even a person in a frame of mind to cooperate with the police would not ordinarily accede to the destruction of his property simply to accommodate a police request to conduct a search. For that reason, an officer ordinarily should not assume that a consent to search conveys permission to conduct the search in a way that involves significant property damage.[8] See *United States* v. *Strickland*, 902 F.2d 937, 941-942 (11th Cir. 1990) (consent to search a vehicle does not extend to slashing spare tire); *State* v. *Koucoules*, 343 A.2d 860, 867 (Me. 1974) (consent to search does not implicitly authorize tearing down a wall of a structure). See also 3 W. LaFave, *Search and Seizure* § 8.1(c), at 161 (1987) ("The police do not have carte blanche to do whatever they please. Certainly they may not engage in search activity which involves the destruction of property, and this would seem to bar breaking into locked containers.").[9]

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[8] Insignificant damage, such as removing a piece of tape in a manner that tears the top of the paper bag, would not ordinarily constitute a sufficient degree of damage to call into question whether the consenting individual would have consented to a search that resulted in the loss of property. The case is likely to be different when the police find it necessary to ruin a briefcase or, to take an extreme case, cut a hole through the body of a car with an acetylene torch in order to execute the search.

[9] This point, we believe, explains the Florida Supreme Court's earlier decision in *State* v. *Wells*, 539 So. 2d 464 (Fla. 1989), aff'd on other grounds, 110 S. Ct. 1632 (1990). In

3. In light of these considerations, we submit that the Florida Supreme Court fell into serious error when it adopted a per se rule that consent to search a vehicle does not extend to a closed container found within the vehicle, and particularly when it applied that rule to a search having the announced purpose of finding drugs. This new, sweeping rule fails to take into account any of the analysis we have discussed above: it fails to acknowledge the ordinary scope of searching authority in the analogous setting of a probable cause search or a search pursuant to a warrant; it disregards what this Court has found to be the ordinary understanding of the scope of a search of an automobile; and it ignores the special considerations that apply to consent searches of automobiles for drugs. Far from justifying a per se rule barring the search of closed containers, the considerations discussed above suggest that the ordinary rule should be quite the opposite: that absent an express or implied limitation on the scope of the search, a consent to search a vehicle for narcotics should authorize the police to open any closed but unsealed containers found within the vehicle. We believe that

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that case, the police obtained a suspect's consent to look into the trunk of his car. Based on that consent, they opened the trunk, encountered a piece of locked luggage, and broke open the locked luggage with a knife. The court in *Wells* repeatedly emphasized the fact that the police had to break into the luggage in order to examine it, and it appears that the court regarded that feature as important to its determination that the police had exceeded the scope of the consent the suspect had given. In this case, the Florida Supreme Court appears to have read the *Wells* decision more broadly, failing to note the feature of property damage that was present in *Wells* and citing *Wells* for the broad proposition that consent to search a vehicle "does not extend to a closed container found inside the vehicle." Pet. App. A1.

this rule best accommodates the competing interests in protecting against unreasonable police interpretations of a consent to search and in ensuring that the essential law enforcement technique of obtaining and exploiting consents to search is not hobbled.

C. The Consent Given In This Case Should Be Construed To Cover The Closed Paper Bag Found On The Floor Of The Car's Passenger Compartment

In this case, Officer Trujillo informed respondent Enio Jimeno that he was looking for narcotics. Thus, the officer's statement had the effect of implicitly limiting the search to containers or compartments that might contain drugs. Since it was reasonable to believe that drugs in the car might be found within the paper bag, it follows that the paper bag was within the scope of the consent given in this case. Moreover, respondent never objected to the conduct of the search, including the officer's search of the paper bag, even though respondent was present at the time.

As we have noted, the test for assessing the validity and the scope of a consent to search is an objective one. The consent should therefore be construed as permitting a search as extensive as a reasonable person would expect the officers to conduct under all the circumstances, taking into account the specific terms and context of the consent. Here, the police officer told respondent he was searching for drugs; respondent then gave the officer general and unrestricted permission to search the automobile. As the trial court conceded, see Pet. App. A6, under these circumstances, respondent Enio Jimeno "could have assumed that the officer would have searched the bag."

The fact that respondent no doubt hoped that Officer Trujillo would not search the bag does not affect the validity or the scope of the consent. It does not, of course, undercut the trial court's determination that it was reasonable for Jimeno to expect that the bag would be searched. Jimeno may have consented to the search for a variety of reasons: he may have believed there was no real hope of escape and have simply decided to capitulate; he may have hoped that the officer, impressed with his cooperative attitude, would overlook the bag or decide not to search at all; he may have forgotten just how conspicuous the bag was in the car; or he may have been planning a defense of lack of knowledge, as to which his ready acquiescence in the request for a search could be put to good effect. Indeed, it may even be that Jimeno consented to the search because he was unaware of what was in the bag and therefore saw no harm in allowing the officer to search the car. But whatever Jimeno's motivation, and whatever his subjective expectations as to the probable scope of Officer Trujillo's search, a reasonable observer would find respondent's consent to be unrestricted, and Officer Trujillo's examination of the bag to be entirely consistent with the authorization to search the car.

Finally, the search of the paper bag in this case did not require or result in damage to property. This is therefore not a case such as *Wells*, in which the state court concluded that breaking open a locked suitcase was not within the scope of the defendant's consent to search the trunk of his car. Under these circumstances, unlike the case where the police must damage a container in order to gain access to it, a reasonable person would not expect the officer to seek further consent before opening the package. The consent that was given in this case should therefore be construed to authorize the search of the paper bag in which the police found the cocaine that formed the basis for the charges in this case.

CONCLUSION

The judgment of the Florida Supreme Court should be reversed.

Respectfully submitted.

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JANUARY 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 20305